

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

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In re: Estate of Alice J. Raymond, Deceased

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CLAIR MORSE,

Petitioner – Appellee,

v.

VALERIE SHARKEY, GAIL THOMOAS, GARY  
ZEIGLER, DEANNA CONANT, CARYN NUZHET,  
JAY CURRY, MARY JEAN MANDELA, JOHN  
PACKARD, FRANK PACKARD, LISA MORSE,  
ELLIOT GUILLORY, ROBERT MCCLELLAND,  
BEVERLY CLEMENT, DAVID MORSE, JUDITH  
FROELICK, PHILLIP MORSE, JOAN SUMMERS,  
JANICE FELKEY, DONALD MORSE, MARVIN  
STULL, ERIC STULL, FRANK BRIGGS, JOANNE  
CARTER, and MARILYN RIGEL,

Respondents – Appellants.

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MI SC Case No. 134461  
COA Case No. 267364  
Lenawee County Probate  
LC Case No. 05-044839 DE

134461 RS  
Suppl by  
SUPPLEMENTAL BRIEF TO APPLICATION FOR LEAVE TO APPEAL

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**SUPPLEMENTAL STATEMENT OF QUESTIONS PRESENTED**

1. WAS THE LANGUAGE USED IN ALICE J. RAYMOND'S WILL SUFFICIENT TO ANTICIPATE THE POSSIBILITY THAT THE CLASS OF "BROTHERS AND SISTERS THAT SURVIVE ME" OF EITHER HER OWN FAMILY OR CLAUDE'S FAMILY MIGHT HAVE NO MEMBERS?

The Respondent-Appellants answer Yes!

2. DOES THE "WILL" LANGUAGE "OR TO THE SURVIVOR OR SURVIVORS THEREOF" CREATE AN ALTERNATIVE DEVISE TO THE DESCENDANTS OF PREDECEASED SIBLINGS OF THE TESTATOR (OR TO THE DESCENDANTS OF PREDECEASED SIBLINGS OF CLAUDE C. RAYMOND) WHICH ONLY TAKES EFFECT IF ALL OF TESTATOR'S (OR CLAUDE C. RAYMOND'S) SIBLINGS PREDECEASE THE TESTATOR?

The Respondent-Appellants answer No!

3. DOES THE PLACEMENT OF THE "WILL" LANGUAGE "SHARE AND SHARE ALIKE" IN THE MIDDLE OF THE PERTINENT CLAUSE RATHER THAN AT THE END HAVE ANY SIGNIFICANCE?

The Respondent-Appellants answer Yes!

4. DOES THE FACT THAT THE ANTILAPSE STATUTE (MCL 700.2603) IF IT CAME INTO PLAY WOULD APPLY ONLY TO THE BLOOD RELATIVES OF THE LAST RAYMOND TO DIE FAVOR A CONSTRUCTION OF THE WILL LANGUAGE THAT WOULD AVOID RESORT TO THE ANTILAPSE STATUTE TO CARRY OUT THE OVERALL INTENTION OF THE RAYMONDS TO THE MAXIMUM EXTENT POSSIBLE?

The Respondent-Appellant answers Yes!

## **SUPPLEMENTAL ARGUMENT**

- 1. WAS THE LANGUAGE USED IN ALICE J. RAYMOND'S WILL SUFFICIENT TO ANTICIPATE THE POSSIBILITY THAT THE CLASS OF "BROTHERS AND SISTERS THAT SURVIVE ME" OF EITHER HER OWN FAMILY OR CLAUDE'S FAMILY MIGHT HAVE NO MEMBERS?**

**The Respondent-Appellants answer Yes!**

The natural inclination of families is to treat all relatives in a fair and equal manner to the extent possible unless there is some known reason to favor certain ones over others. There is no evidence whatsoever in the instant case to suggest that either of the Raymonds favored or disliked any of their brothers, sisters, nieces or nephews whether blood related to him or her or otherwise. Accordingly, in that it is submitted that the overriding intention reflected on the face of the Alice J. Raymond Will was to give 50% of her residuary estate to each side of her extended family.

In our prior Brief we have illustrated the fact that if the words "or to the survivor or survivors thereof" are to have any independent meaning whatsoever in the context of the Raymond Wills, such words refer to the surviving issue of her deceased brothers and sisters at the time of her death for sound and logical reasons. Such a conclusion would be consistent with the result obtained pursuant to Michigan statutes regarding inheritance rights for blood related beneficiaries in intestate estates (MCL 700.2103 ( c )).

It is logical to assume that both the Testatrix and the draftsman of the Will intended to reach the desired result in all reasonably conceivable circumstances by the wording of the Will itself without the necessity of any resort to the Antilapse Statutes (MCL 700.2603). The only possible way of providing that 50% of the assets would go to the Claude Raymond side of the family if Claude and all of Claude's brothers and sisters were deceased at the time of

Alice's death was to provide for issue of deceased brothers and sisters by the language of the Will itself since the Antilapse Statute does not apply to non-blood related persons. Clearly, if all of Claude Raymond's siblings had predeceased Alice J. Raymond, the Claude Raymond descendants of their parents would receive nothing without the words to the survivor or survivors thereof being considered.

Therefore, to ensure that the Claude Raymond family would receive 50% of the estate assets under all reasonably conceivable circumstances the language of the Will, albeit not in conformance with the current terms of art, was deliberately conceived to lead to the proper result. These words not only anticipated the possibility of an intestacy unless provision was made for the descendants of deceased brothers and sisters but also it provided for fair and equal treatment of all concerned by the language of the Will under all circumstances. Survivors are survivors regardless of the time at which they become survivors and to limit the application of these words to a situation where all of Claude Raymond's brothers and sisters were deceased at Alice's death would not be logical without adding words to the Will.

2. **DOES THE "WILL" LANGUAGE "OR TO THE SURVIVOR OR SURVIVORS THEREOF" CREATE AN ALTERNATIVE DEVISE TO THE DESCENDANTS OF PREDECEASED SIBLINGS OF THE TESTATOR (OR TO THE DESCENDANTS OF PREDECEASED SIBLINGS OF CLAUDE C. RAYMOND) WHICH ONLY TAKES EFFECT IF ALL OF TESTATOR'S (OR CLAUDE C. RAYMOND'S) SIBLINGS PREDECEASE THE TESTATOR?**

**The Respondent-Appellants answer No!**

Living persons have no survivors. The words "or to the survivor or survivors thereof" either refer to some survivors other than survivors of living brothers and sisters or the words are meaningless in this Will. The language of the Will does not specify any additional circumstances or time frame under which the words would or would not apply. In short, nieces and nephews become survivors when their relevant parent dies and if Alice Raymond died after their relevant parent died we submit that it was intended that they are entitled to take under the Alice J. Raymond Will.

If the words used in the Will are augmented or expanded to establish conditions upon which the word survivors would take effect, unintended inequities could result from such expansion.

Firstly, it is illogical to conclude that a Testatrix would leave one-half of her substantial estate to a last surviving elderly brother or sister of her deceased husband when there would be numerous nieces and nephews who would receive nothing simply because the Testatrix did not survive all of his brothers and sisters. And when there are no words whatsoever to support such a conclusion clearly it can be seen that it was not the intention of the Testatrix for such a result to ensue.

Secondly, if all of the brothers and sisters of Claude C. Raymond had predeceased Alice then all of their issue would have received an inheritance

under this scenario whereas the nieces and nephews of the brothers and sisters of Alice who did not survive her (assuming that some did) would receive nothing. It is difficult to believe that Alice would have intended such a result and the words used do not support such a result.

Ironically, the Testatrix and her draftsman, provided for all of these contingencies. The Respondent-Appellants in this case are from both sides of the family. They believe that they are survivors of their relevant parent. They believe that they became survivors at the time their relevant parent died. They believe that they remained so until Alice's death and that it was intended that each surviving family group of such a deceased parent would take their deceased parent's share, per stirpes, under Alice's Will. There is no evidence to suggest that Alice did not understand that the words "survivor or survivors" could not logically mean survivors or survivors of brothers and sisters who were still living at the time of Alice's death. Judicial notice should be taken of the fact that her attorney, being a member of the Michigan Bar Association and qualified to practice law in the State of Michigan, was no doubt proficient in the English language. Respondent-Appellant submits that the Raymond's attorney in drafting the Wills used all of the words necessary to reflect their intentions. It is conceded that the words could have been more precise but the lack of precision is the reason that "construction" of the Will is necessary to determine the intention of the Testatrix.

In the final analysis, the words "or to the survivor or survivors thereof" is an alternative devise that takes effect if any of the siblings of either of the Raymonds had predeceased the survivor of the two Raymonds leaving issue surviving. We submit that no equally plausible explanation has been proposed to date in the instant case.



**3. DOES THE PLACEMENT OF THE "WILL" LANGUAGE "SHARE AND SHARE ALIKE" IN THE MIDDLE OF THE PERTINENT CLAUSE RATHER THAN AT THE END HAVE ANY SIGNIFICANCE?**

**The Respondent-Appellants answer Yes!**

Respondent-Appellants submit that the draftsman of the Raymond Wills was aware of the necessity to draft the Wills in such a manner that both family groups would be treated equally regardless whether some or all of the siblings predeceased the survivor of the Raymonds. Any notion that all of the brothers and sisters on one side, and all of the their issue as well, would predecease the survivor of the Raymonds would be far-fetched in view of the numbers of young persons involved.

Hence, the Will was drafted in such a manner that all issue of both family groups would take their deceased parents' share just as if they were blood-related to the second of the Raymonds to die. A trifold purpose was achieved in this manner. The likelihood of any intestacy would almost be non-existent, the Antilapse Statute (MCL 700.2603) would never apply, and all issue of the combined brothers and sisters would be treated equally, assuming that the brothers and sisters who received a full share would eventually pass same to their children or issue.

The words "share and share alike" were inserted in the dispositive clauses in such a manner as would achieve the same result as under the Inheritance Statutes (MCL 700.2103). If these words were inserted at the end of the dispositive clauses the surviving siblings would only receive the same share as the issue of deceased siblings. This would obviously be unfair.

Accordingly, the placement in the middle of the pertinent clause not only had significance but was essential to carry out the precise intention of the Raymonds.

4. DOES THE FACT THAT THE ANTILAPSE STATUTE (MCL 700.2603) IF IT CAME INTO PLAY WOULD APPLY ONLY TO THE BLOOD RELATIVES OF THE LAST RAYMOND TO DIE FAVOR A CONSTRUCTION OF THE WILL LANGUAGE THAT WOULD AVOID RESORT TO THE ANTILAPSE STATUTE TO CARRY OUT THE OVERALL INTENTION OF THE RAYMONDS TO THE MAXIMUM EXTENT POSSIBLE?

**The Respondent-Appellant answers Yes!**

There are several cases from other jurisdictions which hold that the words "or to the survivor or survivors of them" following a designated group of beneficiaries means descendants of named beneficiaries. Either unusual circumstances or an unusual context in which the words are used are the normal controlling factors in finding the intention of the Testator or Testatrix in such cases. However, none of the cases which we have reviewed involves the unique factual situation which exists in the instant case. Likewise, none of the cases that we have reviewed simply discards the words on the basis that such words are meaningless in the context which they are used. (See Schneller v. Schneller, 356 ILL 89, 190 N.E.121, 92 A.L.R. 838 (1934); Estate of Mohr, 7 Cal. App. 3d 641, 86 Cal. RPTR. 731 (1970); and 54 A.L.R. 3d 280, Part II Section 3 (a) and cases cited therein.

The instant case presents a much stronger reason for finding that the words "or to the survivor or survivors thereof" (Emphasis added) refer to descendants of deceased brothers and sisters than any case which we have reviewed. Specifically those words follow a gift to "brothers and sisters that survive me." The existence of those following words and the fact that they are used in two separate statements, one for each family group, guaranteed that the descendants of Claude Raymond's brothers and sisters who were deceased at the time of Alice's death would receive equal treatment to her blood related nieces and nephews under her Will. That the substance and arrangement of the

phrases cannot logically lead to any other plausible interpretation is a showing of intention. In short, it was intended that all descendants of deceased parents (blood related or otherwise) would receive their deceased parents' share at the time of Alice's death.

There is no question that additional or different wording would have made the interpretation more clear but the overall intention of Alice can readily be gleaned from an examination of the entire Will. Alice's attorney apparently recognized that the language of the Will itself should provide for Claude's nieces and nephews as well as her own nieces and nephews, otherwise Claude's could be left out. If important words in the Will are now ignored there will be an obvious unintended result in view of the Antilapse Statute (MCL 700.2603) which is another significant indicator of intent.

MCL 700.2603 (1) ( c ) declares that:

"For the purpose of section 2602 (1), words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children," are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section."

In the instant case, in the event that the words "or to the survivor or survivors thereof" are excluded, we have the words "that survive me" and there is no additional evidence of an intent contrary to the statute. MCL 700.2602 (1) states that "In the absence of a finding of a contrary intention, the rules of construction in this part control construction of a Will."

The Antilapse Statute provides for a substitution gift for the descendants of a deceased devisee who had a common grandparent with the Testator. The Part "A" Respondent-Appellants are in that category. The Petitioner in this case sought to interpret the Antilapse Statute to his advantage in his initial petition by

referring to MCL 700.2603 (1) (d) which discusses an alternative devise. However, there is no viable alternative devise without the words "or to the survivor or the survivors thereof." There is simply the devise to the living brothers and sisters if the Will is not interpreted to provide for survivors of deceased brothers and sisters.

Therefore, it is MCL 700.2603 (1) (b) that applies to the instant case if Petitioner-Appellees theory is correct. In such event, the nieces and nephews of deceased brothers and sisters related by blood to Alice J. Raymond would take their deceased parents' share by representation and Claude Raymond's blood related nieces and nephews would receive nothing. Interestingly, this probably is a result which the Petitioner-Appellee himself does not desire.

The Reporter's Comment to MCL 700.2603 contained in Estates and Protected Individuals Code by John H. Martin (The Institute of Continuing Legal Education 2006 Edition) on Page 91 fully supports the above analysis as follows:

"A very important rule of construction is stated in Sec 2603 (1) ( c). It probably is not a change from current law, but it is one that might surprise many practitioners. The rule says that stating a condition that a beneficiary must survive the testator is not sufficient, by itself, to overcome the Antilapse Statute. This follows from the fact that the law requires a beneficiary to survive to receive a gift under a Will. Put simply, stating a condition of survival is not an expression of intent contrary to the Antilapse rule of construction."

Respondent-Appellants submit that the Alice J. Raymond Will was drafted in such a manner that it avoided the application of the Antilapse Statute. One of the main purposes of Antilapse Statutes is to avoid unfair results in estate settlements. In this particular situation Petitioner-Appellees interpretation of Alice J. Raymond's Will would bring the Antilapse Statute into play and there would be an unfair result for the Claude Raymond clan.

### CONCLUSION AND RELIEF

Respondent-Appellants original Brief is incorporated herein. Appellants submit that the decisions of the Probate Court and the Court of Appeals should be reversed. If the words "or to the survivor or survivors thereof" as used in the Alice J. Raymond Will are determined to be meaningless then the Descendants of deceased brothers and sisters of Alice J. Raymond should take their deceased parents' shares pursuant to the Antilapse Statute and Claude Raymond's nieces and nephews should receive nothing.

But Appellants submit that all of the words in the Alice J. Raymond Will should be used, particularly when use of all of the words leads to a logical and plausible result. The content, structure, and arrangement of all of the dispositive clauses and words used in the Will are such that if any of the words are left out the overall intention of Alice J. Raymond Will be thwarted.

Appellants submit that the relief requested in their original Brief should be granted.

Respectfully submitted,

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